

JUL 5 1979

THOMAS M. K. JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-21

**FRANK ALONZO, WILLIAM DENNEY, SCOTT DUBS,
STEVE EDWARDS, PAUL FAWVER, and PAUL HALM,**

Petitioners,

vs.

VILLAGE OF ROMEOVILLE,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

**STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733**

Attorney for Petitioners

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	2
JURISDICTION	3
QUESTION PRESENTED	3
CONSTITUTIONAL PROVISIONS INVOLVED	4
STATEMENT OF THE CASE	5
REASONS FOR GRANTING WRIT	7
CONCLUSION	13
 APPENDICES:	
A—Order of July 31, 1978, of The Honorable Joseph Sam Perry	1a
B—United States Court of Appeals Unpublished Or- der of April 9, 1979	2a
C—42 U.S.C. 1983 Civil Action for Deprivation of Rights	3a

TABLE OF AUTHORITIES

Cases

Andre et al v. Board of Trustees of the Village of Maywood, Cook County, Illinois et al, 561 F.2d 48 (7th Cir. 1978)	6, 8, 9, 10, 12
Detroit Police Lieutenants and Sergeants Association v. Detroit, 56 Mich. App. 617, 224 N.W. 2d 728 (1974)	11

Detroit Police Officers Assn. v. Detroit, 405 U.S. 950 (1972)	11, 12
Fraternal Order of Police Youngstown Lodge #28 et al v. Hunter, Mayor et al, 49 Ohio App. 2d 185 (1975)	7, 10
McCarthy v. Philadelphia Civil Service Commission, 424 U.S. 645 (1976)	11

*Constitutional Provisions and
Statutory Authorities*

United States Constitution:	
Amendment V	2, 4
Amendment XIV	2, 3, 4
Article I, Par. 10, Cls. 1	3, 4
42 U.S.C. 1983	3, 3a
28 U.S.C. 2201, 2202, 1331, 1343	3
Ill. Rev. Stat., Chap. 24, Cities & Villages, Sec. 3-14-1 ..	8, 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No.

**FRANK ALONZO, WILLIAM DENNEY, SCOTT DUBS,
STEVE EDWARDS, PAUL FAWVER, and PAUL HALM,**

Petitioners,

vs.

VILLAGE OF ROMEVILLE,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

Petitioners, Frank Alonzo, William Denney, Scott Dubs, Steve Edwards, Paul Fawver and Paul Halm, respectfully pray a Writ of Certiorari issue to review the judgment entered on April 9, 1979, by the United States Court of Appeals for the Seventh Circuit, in its cause No. 78-2164.

OPINIONS BELOW

On July 31, 1978, the Honorable Joseph Sam Perry of the United States District Court for the Northern District of Illinois, Eastern Division, denied petitioners' motion for summary judgment that the Village of Romeoville residency ordinance of July 20, 1977, requiring petitioners to relocate into the Village of Romeoville was in violation of their constitutional rights under the Fifth and Fourteenth Amendments and in violation of the United States Constitution, Article I, Section 10, relating to impairment of contracts by retrospective application.

In his order of July 31, 1978, the Honorable Joseph Sam Perry granted the respondent's cross-motion for summary judgment which cross-motion for summary judgment legally theorized that the petitioners had no vested rights in their outside residency which had been authorized by a prior Romeoville ordinance of January 2, 1975, and that, as a result, there could not have been a denial of any constitutional rights under the Fifth and Fourteenth Amendments of the United States Constitution nor impairment of contract via retrospective application of the newly created Romeoville residency ordinance of July 20, 1977. (Order of July 31, 1978, of the Honorable Joseph Sam Perry, is reprinted herein as Appendix A).

On April 9, 1979, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, affirmed Judge Perry's ruling, which Court of Appeals' unpublished order is reprinted herein as Appendix B.

JURISDICTION

1. The federal question was raised by the petitioners' complaint to the effect that the newly created residency ordinance of the Village of Romeoville of July 20, 1977, requiring the petitioners to relocate from their outside residencies into the Village of Romeoville within a period of two years from the adoption of that newly created ordinance violated the petitioners' constitutional rights pursuant to 42 U.S.C. 1983 (Appendix C), the due process and equal protection clauses under the Fourteenth Amendment of the United States Constitution, the ex post facto and impairment of obligations of contract clauses of Article I, Par. 10, Cls. 1, of the Constitution of the United States, 28 U.S.C. Pars. 2201, 2202, 1331 and 1343.

2. The petition for certiorari was filed within ninety days after the entry of the judgment by the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, on April 9, 1979.

QUESTION PRESENTED

1. Does the retrospective application of the July 20, 1977, Romeoville ordinance requiring residency for all police officers of the Village of Romeoville within a period of two years from the adoption of the said ordinance impair the vested and/or contractual rights of the petitioners in violation of the due process and impairment of contract clauses of the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Section 10:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal, coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

STATEMENT OF THE CASE

On January 2, 1975, the Village of Romeoville passed a residency ordinance which provided as follows:

"Section 14-1: All policemen other than the Chief shall reside within 15 miles of the corporate limits of the Village of Romeoville."

On July 20, 1977, the Village of Romeoville passed the following amending residency ordinance:

"Section 14-1: All commissioned police officers of the Village shall reside within the corporate limits of the Village of Romeoville, Will County, Illinois. Any present commissioned officer who resides outside the corporate limits of the Village shall be required to be a resident of the Village of Romeoville within two years after the date of the adoption of this ordinance. All probationary police officers shall be required to reside within the corporate limits of the Village on the date such officer receives his commission."

"Section 14-5: A commissioned police officer of the Village shall not be eligible for promotion to the next highest rank unless the officer resides within the corporate limits of the Village."

Prior to July 20, 1977, the petitioners had established residences within the 15 mile corporate limits of the Village of Romeoville.

A complaint for declaratory judgment and other relief was filed on October 13, 1977, by the petitioners challenging the July 20, 1977, Romeoville ordinance as violating the due process clause and the impairment of contract clause of the *United States Constitution* in that the July 20,

1977, Romeoville ordinance was impairing a vested and/or contractual relationship of employment between them and the Village of Romeoville by retrospectively requiring the petitioners to establish a Romeoville residency within a period of two years for the purpose of continuing in their employment as Romeoville police officers and for the purpose of requiring such residency before promotions to the next rank were to be granted.

On July 31, 1978, the Honorable Joseph Sam Perry denied the petitioners' motion for summary judgment that the newly created Village of Romeoville residency ordinance of July 20, 1977, violated petitioners' constitutional rights of due process and impairment of contract by requiring them to relocate from their outside residency into the Village of Romeoville within two years from the adoption of the July 20, 1977, Romeoville residency ordinance and further granted the respondent's cross-motion for summary judgment upholding the validity of the July 20, 1977, Romeoville residency ordinance.

On August 28, 1978, a notice of appeal was filed by the petitioners.

On April 9, 1979, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, affirmed the Honorable Joseph Sam Perry's judgment of July 31, 1978, by holding that the *Andre v. Village of Maywood*, 561 F.2d 48 (7th Cir. 1978), decision as being applicable, in this instance, which decision held that no vested contractual obligations existed between the Village of Maywood and its non-resident employees and that both *Andre* and the matter at hand merely established eligibility requirements for applicants of employment.

REASONS FOR GRANTING WRIT

On March 22, 1976, in the *Fraternal Order of Police Youngstown Lodge #28 et al, appellees, v. Hunter, Mayor et al, appellants*, 49 Ohio App. 2d 185 (1975), the United States Supreme Court denied a Writ of Certiorari on a docketed numbered case of 75-846.

In the *Youngstown* decision, at issue, was a residency rule of January 20, 1972, which had been promulgated by the Civil Service Commission of the City of Youngstown which rule provided as follows:

"Any officer or employee not residing within the city limits of Youngstown, except as otherwise provided in Rule IV, Section 5, is subject to dismissal from service of the city."

Analyzing the aforesaid rule, the Ohio Court of Appeals held that policemen who had entered into the civil service prior to January 20, 1972, were not required to relocate into the City of Youngstown on the basis that the January 20, 1972, rule as applied to them violated their constitutional right under the due process clause of the United States Constitution and was retroactive in its operation thereby violating the impairment of contracts clause of the United States Constitution.

By denying the Writ of Certiorari, the United States Supreme Court upheld the position of the Ohio Court of Appeals that a residency rule requiring relocation as applied to employees employed prior to the creation of such a rule was in violation of due process and impairment of contracts under the United States Constitution.

On January 9, 1978, the United States Supreme Court denied a Writ of Certiorari in case No. 76-609 involving *Frank Andre et al v. Board of Trustees of the Village of Maywood, Cook County, Illinois et al.*

In that decision, the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, held that the Village of Maywood could create a residency ordinance requiring non-resident employees to relocate into the Village of Maywood if those employees desired to continue in their employment.

By denying the Writ of Certiorari, the United States Supreme Court upheld the *Andre* decision to the effect that villages may create ordinances compelling their employees to relocate into villages when such employees had established outside residency prior to the creation of such residency ordinances requiring such relocation.

As a consequence, there is a conflict which the United States Supreme Court must clarify in that there are two denials of Writs of Certiorari which express opposite views on the question of whether a policeman employed prior to a residency ordinance requiring him to relocate within the boundaries of the village must so locate.

Under *Ill. Rev. Stat.*, Chap. 24, Cities & Villages, Sec. 3-14-1, cities and villages less than 500,000 have the power to enact ordinances providing for outside residency for firemen and policemen as is substantiated by the following language from that section:

“Except for incorporated towns which have superseded a civil township, municipalities having a population of not more than 500,000 are hereby authorized and empowered to adopt ordinances which allow firemen and policemen to reside outside of the corporate

limits of the municipality by which they are employed both at the time of appointment and while serving as such firemen and policemen.”

On the basis of the aforesaid *Ill. Rev. Stat.*, Chap. 24, Cities & Villages, Sec. 3-14-1, the Village of Romeoville enacted an ordinance on January 2, 1975, which provided “All policemen other than the Chief shall reside within 15 miles of the corporate limits of the Village of Romeoville.”

When the Village of Romeoville enacted the January 2, 1975, residency ordinance, it established a vested and/or contractual right in the petitioners in terms of their outside residency pursuant to the stated law of Illinois as expressed in *Ill. Rev. Stat.*, Chap. 24, Cities & Villages, Sec. 3-14-1.

The application of the *Andre* decision to the petitioners is inappropriate in that the language of the Romeoville ordinance of 1975 differs drastically from the Maywood ordinance, since the Romeoville ordinance of 1975 by express and unequivocal language provides that the petitioner have an *absolute* and *unconditional* right to reside within 15 miles of the corporate limits of the Village of Romeoville while the Maywood ordinance, prior to amending the residency requirement for residing within the Village of Maywood, provided as follows:

“In hiring new employees, preference will be given Maywood residents—all other factors being equal. (sic) If qualified village residents do not apply, then non-residents may be employed in any position.”

In analyzing the language of the aforesaid Maywood ordinance, the *Andre* Court stated:

“Section I(B)(2) does not grant an express approval or authorization to Maywood employees to live

outside Maywood. Whatever that ordinance established with respect to hiring preferences, we conclude that it did not serve to create the vested contractual right claimed by appellants here. Nothing in the language of Section I(B)(2) indicated the creation of an *absolute unconditional* right in plaintiffs to live outside Maywood."

As a consequence, the Romeoville petitioners have a different standing than their counterparts in *Andre* in that they had been permitted to reside within 15 miles of the corporate limits of the Village of Romeoville with the result that the Village of Romeoville had passed an ordinance on July 20, 1977, which indeed violated the constitutional rights of the petitioners relating to the due process clause of the *United States Constitution* and violated the impairment clause of the *United States Constitution* pertaining to contracts.

In distinguishing the *Andre* case from that of the petitioners, the petitioners are supported in their position by the *Youngstown* decision which involves the same issue of whether policemen previously employed prior to a newly created residency requirement compelling relocation applies to such policemen.

As the *Youngstown* Court held, such a newly created residency requirement is not applicable as it violates the due process clause and impairment of contracts clause under the *United States Constitution* in that it infringes upon vested rights.

In this instance, the petitioners have a stronger argument of vesting than the *Youngstown* police officers in that there was a specific Romeoville ordinance of 1975 which permitted them to reside outside the Village of Romeoville.

Such permission constituted a contract; to destroy the validity of such a contract would be contrary to equity and good conscience in terms of *Detroit Police Lieutenants and Sergeants Association v. Detroit*, 56 Mich. App. 617, 224 N.W. 2d 728 (1974).

In the *Detroit* case police personnel were provided with written permission to live outside the corporate limits of the City of Detroit prior to June 1968.

In June of 1968, an ordinance requiring residency of city employees was passed; the Court held that it would not apply to the plaintiffs who had secured written permission from the commissioner to live outside the corporate limits of Detroit on the basis of equity and good conscience.

Are the petitioners herein any different than the police officers in the *Detroit* decision?

The legal positions as expressed by the *Ohio* and *Detroit* decisions are not contradicted by *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645 (1976), nor by *Detroit Police Officers Assn. v. Detroit*, 405 U.S. 950 (1972).

In the *McCarthy* matter, the employees had voluntarily accepted employment subject to a pre-existing and continuous residency requirement; in this instance the petitioners had not accepted their employment as police officers with the Village of Romeoville on the basis of a pre-existing and continuous residency ordinance requiring them to reside in Romeoville; on the contrary, the Village of Romeoville specifically by express language provided the petitioners with a contractual vesting of rights to live within 15 miles of its corporate limits; the petitioners accepted their employment in terms of the Village of Ro-

meoville 1975 ordinance which provided for outside residency.

With reference to the *Detroit* case, the thrust of the legal argument was not based upon the violation of any vested right or any other fundamental constitutional right except that the petitioners were challenging the residency requirement on the basis that it violated the equal protection clause of the *United States Constitution* in that the residency requirement was applied more stringently to them than other employees; furthermore, in the *Detroit Police Officers Assn.* matter, the residency requirement was not retrospective as the Romeoville ordinance of 1977 is in its application to the petitioners.

Consequently, the unpublished order of April 9, 1979, of the United States Court of Appeals, Seventh Circuit, Chicago, Illinois, affirming the Honorable Joseph Sam Perry's judgment that the *Andre v. Village of Maywood* decision was indistinguishable from that of the petitioners has been refuted by this Petition for Writ of Certiorari and that the violation of the constitutional rights of due process and impairment of contracts exists as to the petitioners by the application as to them of the newly created residency requirement of the Romeoville ordinance of July 20, 1977.

CONCLUSION

The writ should issue to the United States Court of Appeals for the Seventh Circuit, in that the United States Court of Appeals should have reversed the Honorable Joseph Sam Perry and should have sustained the petitioners' legal position that the July 20, 1977, Romeoville ordinance requiring the petitioners to relocate from their outside residency into the Village of Romeoville violated their constitutional rights under the due process and impairment of contracts clauses of the United States Constitution.

Respectfully submitted,

STANLEY H. JAKALA
3219 Maple Avenue
Berwyn, Illinois 60402
(312) 788-5733

Attorney for Petitioners

APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

Name of Presiding Judge,
Honorable Joseph Sam Perry

Cause No. 77 C 3802

Date July 31, 1978

Alonzo, et al. vs. Village of Romeoville

ORDER

This cause comes on upon plaintiffs' motion for summary judgment and defendant's cross-motion for summary judgment. The court has read and considered said motions and the memoranda of the respective parties and finds that defendant's cross-motion is well taken and should be granted.

Accordingly, it is Ordered that plaintiffs' motion for summary judgment be and the same is hereby denied; that defendant's cross-motion for summary judgment be and the same is hereby granted; that judgment in favor of the defendant and against the plaintiffs be and the same is hereby awarded; and that plaintiffs shall take nothing by this action.

/s/ J. S. Perry

APPENDIX B

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

(Argued April 9, 1979)

April 9, 1979.

Before

HON. PHILIP W. TONE, *Circuit Judge*

HON. WILLIAM J. BAUER, *Circuit Judge*

HON. DUDLEY B. BONSAI, *Senior District Judge**

FRANK ALONZO, WILLIAM DENNEY, SCOTT DUBS,
STEVE EDWARDS, PAUL FAWYER and PAUL
HALM,

Plaintiff-Appellants,

No. 78-2164 vs.

VILLAGE OF ROMEOVILLE,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division

No. 77-C-3802

J. SAM PERRY, *Judge.*

ORDER

As announced from the bench at the conclusion of oral
argument, the judgment of the district court is affirmed.

* The Honorable Dudley B. Bonsal, Senior District Judge of
the United States District Court for the Southern District of
New York, is sitting by designation.

The case is governed by *Andre v. Village of Maywood*,
561 F.2d 48, 50-51 (7th Cir. 1978). In that case a municip-
al ordinance permitting the employment of nonresidents
as village policemen, firemen, etc., "[i]f qualified Village
residents did not apply," was held not to create vested
contractual obligations of the village to nonresident em-
ployees. We view the ordinance in the case at bar, which
permits the employment by the village of persons living
within 15 miles of the village borders, as indistinguishable
in principle from the ordinance in *Andre*. Neither ordi-
nance created vested rights; both merely established eligi-
bility requirements for applicants for employment.

AFFIRMED.

APPENDIX C

42 U.S.C. 1983 Civil action for deprivation of rights .

Every person who, under color of any statute, ordinance,
regulation, custom, or usage, of any State or Territory,
subjects, or causes to be subjected, any citizen of the
United States or other person within the jurisdiction there-
of to the deprivation of any rights, privileges, or immunities
secured by the Constitution and laws, shall be liable to the
party injured in an action at law, suit in equity, or other
proper proceeding for redress.